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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1751

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

v.

THOMAS CONYERS,

Respondent.

On Petition for Writ of Certiorari to the New York Court of Appeals

PETITIONER'S REPLY

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In opposition to the petition for certiorari, respondent argues that the decision below rested on an independent state ground. This very argument was made in opposition to the motion to amend the remittitur. That argument was rejected by the New York Court of Appeals when it amended its remittitur to reflect that it had necessarily decided a federal constitutional question. Certainly, if there were an alternative state ground requiring reversal, the court would not have stated that it was necessary to pass upon a question under the Federal Constitution. Con-

sequently, as this Court has oft recognized, by amending the remittitur, the New York Court of Appeals was expressly stating that reversal was mandated by the Federal Constitution and that reversal did not rest on any independent state ground. *See, e.g., St. Nicholas Cathedral* v. *Kedroff*, 302 N.Y. 1 (1950), *remittitur amended* 302 N.Y. 689 (1951), *rev'd* 344 U.S. 94, 97 (1952); *see generally* Wolfson and Kurland, *Certificates by State Courts of the Existence of a Federal Question*, 63 Harv. L. Rev. 111 (1949). Moreover, as demonstrated in the petition (*see* pp. 11-12), and recognized by the court below in amending its remittitur, the so-called alternative ground involving the weighing of the probative value of silence against constitutional considerations is based squarely on the Federal Constitution regardless of whether that basis is the Due Process Clause or the fifth amendment.

Conclusion

The petition for writ of certiorari should be granted.

Respectfully submitted,

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